

STATE OF SOUTH CAROLINA
BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E

IN RE:)
)
 Friends of the Earth and Sierra Club,)
 Complainants/Petitioners)
)
 v.)
)
 South Carolina Electric & Gas Company,)
 Defendant/Respondent)

IN RE:)
 Request of the Office of Regulatory Staff)
 for Rate Relief to South Carolina Electric)
 & Gas Company's Rates Pursuant to S.C.)
 Code Ann. §58-27-920)

IN RE:)
)
 Joint Application and Petition of South)
 Carolina Electric & Gas Company and)
 Dominion Energy, Inc. for review and)
 approval of a proposed business)
 combination between SCANA)
 Corporation and Dominion Energy, Inc.,)
 as may be required and for prudence)
 determination regarding the abandonment)
 of the V.C. Summer Units 2 & 3 Project)
 and associated merger benefits and cost)
 recovery plan.)

Rebuttal Testimony
of
Kevin W. O'Donnell, CFA

On Behalf of
South Carolina Energy Users Committee

October 24, 2018

**BEFORE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

REBUTTAL TESTIMONY OF KEVIN W. O'DONNELL, CFA

1 **Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS FOR**
2 **THE RECORD.**

3 A. My name is Kevin W. O'Donnell. I am President of Nova Energy Consultants, Inc. My
4 business address is 1350 Maynard Rd., Suite 101, Cary, North Carolina 27511.
5

6 **Q. ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS**
7 **PROCEEDING?**

8 A. I am testifying on behalf of the South Carolina Energy Users Committee (SCEUC), which
9 is an industrial trade association in South Carolina. Many of SCEUC's members take retail
10 electric service from South Carolina Electric & Gas (SCE&G or the Company) and will be
11 impacted by the proceedings in this case.
12

13 **Q. DID YOU PREVIOUSLY SUBMIT PRE-FILED DIRECT TESTIMONY IN THIS**
14 **CASE?**

15 A. Yes. On September 24, 2018, I submitted prefled direct testimony in this proceeding.
16

17 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
18 **PROCEEDING?**

19 A. The purpose of my testimony is to address the ORS recommendations provided by Mr.
20 Lane Kollen in this docket on September 24, 2018.
21

22 **Q. PLEASE SUMMARIZE YOUR UNDERSTANDING OF MR. KOLLEN'S**
23 **PREFILED DIRECT TESTIMONY.**

1 A. Mr. Kollen has several recommendations in this case that, when totaled, sum to a rate
2 reduction of \$193.3 million. If the Commission accepts all of the ORS recommendations,
3 customer rates would fall more than 20% from SCE&G's pre-abandonment rates.¹

4
5 Embedded in Mr. Kollen's testimony is a series of recommendations that include the
6 following:

- 7
- 8 1. a continuation of customers paying abandonment costs of approximately \$2.8
- 9 billion (total company)² for the now abandoned Summer plants;
- 10 2. the elimination of revised rates from SCE&G's rates;
- 11 3. reduction associated with the reduction in the corporate tax rate from 35% to 21%;
- 12 and
- 13 4. merger-related savings from the potential combination of Dominion and SCANA.
- 14

15 While I appreciate the efforts of the ORS in this case, I believe a further analysis of its
16 recommendations are needed. In addition, I believe the ORS has erred in its
17 recommendation that consumers should pay for nuclear abandonment costs incurred prior
18 to March 12, 2015.

19
20 **Q. PLEASE DESCRIBE THE ORS RECOMMENDATION TO COMPENSATE**
21 **SCE&G FOR NUCLEAR ABONDONMENT COSTS FOR EXPENSES INCURRED**
22 **PRIOR TO 2015.**

23 A. The ORS recommendation in this case is that consumers pay an additional \$86.2 million
24 per year in a "Capital Cost Recovery" (CCR) rider to allow the Company to recover the
25 allowed nuclear abandonment costs, less related regulatory liabilities.

26

¹ ORS news release dated September 25, 2018.
<https://www.regulatorystaff.sc.gov/Documents/News%20Archives/9-25-18%20ORS%20Prefiled%20Testimony%20Final.pdf>

² Prefiled testimony of Mr. Lane Kollen, p. 14, l. 14

1 **Q. DO YOU AGREE WITH THE ORS RECOMMENDATION TO ALLOW SCE&G**
 2 **THE RECOVERY OF NUCLEAR COSTS THAT OCCURRED PRIOR TO**
 3 **MARCH 12, 2015?**

4 A. No. I do not believe the Commission should or, legally, can allow SCE&G to recover its
 5 nuclear abandonment costs.
 6

7 **Q. WHY DO YOU BELIEVE THE COMMISSION CANNOT ALLOW SCE&G TO**
 8 **RECOVER THE NUCLEAR ABANDONMENT COSTS?**

9 A. In order for rate recovery to be allowed, the Base Load Review Act specifically requires
 10 completion, or continuation of construction, of a baseload generating facility. The section
 11 of the BLRA to which I am referring is Section 58-33-275 (c) which states:
 12

13 (c) So long as the plant is constructed or being constructed in accordance
 14 with the approved schedules, estimates, and projections set forth in Section
 15 58-33-270(B)(1) and 58-33-270(B)(2), as adjusted by the inflation indices
 16 set forth in Section 58-33-270(B)(5), the utility must be allowed to recover
 17 its capital costs related to the plant through revised rate filings or general
 18 rate proceedings.
 19

20 SCE&G has ceased construction of the Summer nuclear plants and, according to the plain
 21 reading of the statute cannot be allowed to recovery capital costs related to the plant.
 22 SCE&G and other South Carolina utilities helped to write the details of the BLRA and
 23 understood that abandonment of the plant in the manner as proposed in this docket would
 24 entail the Company losing all revenues associated with the construction of the Summer
 25 plants.
 26

27 The ORS recommendation in this case to allow SCE&G to recover a net cost of \$86.2
 28 million over 20 years as it relates to nuclear abandonment costs.³ State law does not allow
 29 the solution as proposed by the ORS in this case.
 30

³ Prefiled testimony of Mr. Lane Kollen, p. 9

1 **Q. PLEASE EXPLAIN WHY YOU BELIEVE THE STATUTES IN SOUTH**
 2 **CAROLINA DO NOT ALLOW FOR THE ORS PROPOSED SOLUTION IN THIS**
 3 **CASE.**

4 **A.** Section 58-33-280(k), which is the Base Load Review Act (BLRA), states as follows:

5
 6 Where a plant is abandoned after a base load review order approving rate
 7 recovery has been issued, the capital costs and AFUDC related to the plant
 8 shall nonetheless be recoverable under this article provided that the utility
 9 shall bear the burden of proving by a preponderance of the evidence that the
 10 decision to abandon construction of the plant was prudent. Without limiting
 11 the effect of Section 58-33-275(A), recovery of capital costs and the utility's
 12 cost of capital associated with them may be disallowed only to the extent
 13 that the failure by the utility to anticipate or avoid the allegedly imprudent
 14 costs, or to minimize the magnitude of the costs, was imprudent considering
 15 the information available at the time that the utility could have acted to
 16 avoid or minimize the costs. The commission shall order the amortization
 17 and recovery through rates of the investment in the abandoned plant as part
 18 of an order adjusting rates under this article.
 19

20 SCE&G was receiving the benefit of the BLRA, but it was not in compliance with the
 21 statute at the time the Company filed its BLRA case in this docket in which it sought
 22 recovery of the BLRA costs. The reason it was not in compliance is that SCE&G has ceased
 23 construction of the Summer nuclear plant long before the filing of the current docket. Since
 24 SCE&G did not file for recovery of the costs during construction of the plant, it knowingly
 25 has forfeited recovery of all BLRA revenues.
 26

27 Moreover the Company was not in compliance with its most recent order in this matter.
 28 Order No. 2016-794, which was approved on November 28, 2016, approved a budget for
 29 the Summer plants of \$7.7 billion and completion dates for August 31, 2019 (Unit 2) and
 30 August 31, 2020 (Unit 3).⁴ However, on August 1, 2017, SCE&G made a filing (Docket
 31 No. 2017-244-E) with the Commission in which it stated the costs to complete the nuclear
 32 units would be approximately \$8.8 billion, which is \$1.1 billion more than approved in

⁴ Aug. 1 filing in Docket No. 2017-244-E, paragraph 6

Order No. 2016-794.⁵ Further, in the same filing, SCE&G informed the Commission the completion dates were December 31, 2022 (unit 1) and March 31, 2024 (unit 2).⁶

Q. ARE YOU SAYING THAT SCE&G SHOULD HAVE IMMEDIATELY FILED A BLRA CASE DURING ITS ONGOING CONSTRUCTION?

A. Yes, according to testimony from the ORS, SCE&G knew as early as March, 2015 that its construction of the Summer nuclear plant was grossly out of compliance with the BLRA. Instead of asking the Commission to convene a hearing to determine the legalities of ceasing construction of the plant and recovering all BLRA revenues, executives at SCE&G charged forward and continued construction without any regard to the legal statutes of cost recovery in this case. Such action was clear negligence on behalf of SCANA executives in regard to its stockholders. Such negligence should not, however, be bailed out by ratepayers who, clearly, were innocent bystanders at the time all the nuclear construction decisions were being made.

Indeed, South Carolina HB 4375 determines prudence in the following manner:

To the extent a utility enters a contract with a third party that delegates some or all decision-making authority related to the project, the utility retains the burden of establishing the prudence of specific items of cost or specific third-party decisions.

'Prudent', 'prudence', or 'prudence' also requires that any action or decision be made in a timely manner.

In determining whether any action or decision was prudent, the commission shall consider, including, but not limited to:

- (a) whether the utility acts in a timely manner, with any passage of time which results in increased costs or expense prior to the utility acting or making the decision weighing against a finding of prudence;⁷

⁵ Id, paragraph 20

⁶ Id, paragraph 19

⁷ Section of HB 4375, https://www.scstatehouse.gov/sess122_2017-2018/bills/4375.htm

1 They key point, as underlined above, is “timely manner”. SCE&G knew, as early as March,
2 2015, that proceeding with the nuclear construction was uneconomic. Still, executives of
3 the Company recklessly waited in an “untimely manner” hoping that a solution could be
4 found for its construction albatross. Waiting more than 2 years and then ceasing
5 construction **BEFORE** making a BLRA filing violates the very wording of Section 58-33-
6 280(k) and HB 4375. As a result, the Commission has no recourse other than to disallow
7 all nuclear abandonment costs.

8
9 **Q. IF THE COMMISSION DISAGREES WITH YOUR POSITION AND ACCEPTS**
10 **THE ORS POSITION THAT CONSUMERS SHOULD PAY \$2.8 BILLION**
11 **(TOTAL COMPANY) IN ABANDONMENT COSTS, HOW DO YOU**
12 **RECOMMEND THE COMMISSION PRESENT ITS FINDINGS TO THE PUBLIC**
13 **IN THIS DOCKET?**

14 A. This nuclear abandonment case has garnered the attention of almost all South Carolina.
15 Households and businesses have been shaken by the cracks found in the concept of utility
16 regulation.

17
18 While the ORS’ testimony in this case does, indeed, cut rates by \$193.3 million, it also
19 requires ratepayer to pay an addition \$86.2 million in higher nuclear costs. On an
20 individual level, the ORS position on the nuclear abandonment cost equates to each
21 household in SCE&G’s territory paying approximately \$62 per year or \$1,240 over the
22 next 20 years.

23
24 Transparency is critical to the rebuilding of trust in the South Carolina utility regulatory
25 system. If the Commission concludes that it can award SCE&G nuclear abandonment
26 costs, I recommend the Commission specifically provide an order explaining its decision
27 to allow the nuclear abandonment costs and explaining the monetary impact to ratepayer
28 for allowing the nuclear abandonment costs.

29
30 **Q. DO YOU AGREE WITH MR. KOLLEN IN REGARD TO THE OTHER THREE**
31 **ITEMS OF HIS TESTIMONY, SPECIFICALLY, ELININATION OF REVISED**

RATES FROM SCE&G RATES, TAX CUTS AND JOBS ACT (TCJA) RATE CUTS, AND MERGER-RELATED SAVINGS?

A. Yes. I agree with Mr. Kollen in regard to the other components of the ORS position, but I believe, as noted above, the Commission should be very transparent in systematically stating the components in its rate order that pertain to the nuclear issue and then, separately, stating the other issues, such as the TCJA rate cuts and the merger benefits.

Q. HOW DOES THE ORS ACCOUNT FOR ITS RECOMMENDED REVENUE REDUCTION?

A. The ORS further recommends the following:

1. the termination of the revised rates associated with the nuclear abandonment; and
2. the termination of the experimental rates established in Order No. 2018-460.

The net result is to eliminate all revised nuclear rates. The ORS position complies with applicable state law.

Q. PLEASE PROVIDE THE BACKGROUND OF THE TAX RATE REDUCTION AND WHAT, TO-DATE, THE COMMISSION HAS DONE IN REGARD TO THIS MATTER.

A. On December 22, 2017, President Trump signed into law the Tax Cut and Jobs Act (TCJA) that lowered the federal corporate tax rate from 35% to 21%. On December 28, 2017, the ORS filed a motion with the Commission asking it to require utilities under its jurisdiction to report the impact of the TCJA on its operations. On January 10, 2018 in Order No. 2018-26, the Commission directed utilities to file comments and report the impact of the TCJA no later than January 24, 2018. On January 24, 2018 SCE&G filed comments on the impact of the TCJA and estimated rates would be cut in the range of 3.0% to 3.5%. On March 7, 2018, the ORS filed additional comments in which it provided the Commission with its recommendation to address the TCJA. Specifically, the ORS recommended the Commission:

As to the electric operations of SCE&G, as noted by the Company in its letter to the Commission, there is currently a petition pending before the Commission in Docket No. 2017-370-E in which ORS intends to review and report to the Commission, among other things, the impact of the Tax Act on SCE&G's rates. Pending the Commission's final order in that docket in December, ORS recommends the Commission require SCE&G to begin deferring for future ratemaking treatment all revenue requirement benefits of the Tax Act from January 1, 2018 until the effective date of new rates.⁸

From the above statement, it has been the intent of the ORS to address rate reductions related to the TCJA in the current docket involving the nuclear abandonment costs and the proposed merger between Dominion and SCANA.

On April 8, 2018, the ORS filed another motion with the Commission in which it sought to preserve the benefits of the TCJA by requiring the utilities to file amended tariffs, subject to a true-up, related to the savings for the cut in the corporate tax rate.

On April 25, 2018, the Commission issued Order No. 2018-308 in which it stated:

...utilities should track and defer the effects resulting from the Tax Act in a regulatory liability account.⁹

The order specifically addressed electric utilities when it stated:

For the electric utilities, the issue will be addressed in the next rate case or other proceeding.¹⁰

The current proceeding is the "next rate case" for SCE&G and, in following the Commission's above-sated order, the ORS is now addressing the rate cut for the TCJA.

Q. IN HIS PREFILED DIRECT TESTIMONY DID MR. KOLLEN QUANTIFY THE MONETARY IMPACT OF THE TCJA?

A. Yes. On p. 5 of his testimony, Mr. Kollen states the change in the federal corporate tax rate from 35% to 21% will reduce rates \$98.7 million in 2019 and 2020. In addition to this

⁸ March 7, 2018 filing of the ORS in Docket No. 2017-381A, p. 2

⁹ Commission Order No. 2018-308, p. 1

¹⁰ id

annual change, Mr. Kollen further recommends a reduction in revenues of \$68.2 million resulting from: 1. the change in the corporate tax rate (35% to 21%) that has occurred since January 1, 2018; and 2. the amortization of the protected excess accumulated deferred income taxes (ADIT). So, effective January 1, 2019, Mr. Kollen's recommendation to reduce rates by \$193.3 million includes tax changes of approximately \$166.9 million. Some form of tax rate reduction for SCE&G customers, however, would have occurred irregardless of the nuclear abandonment issue. The ORS position complies with applicable law.

Q. WHAT OTHER RATE REDUCTION ESTIMATES ARE INCLUDED IN THE ORS RECOMMENDATION TO REDUCE RATES \$193.3 MILLION IN THIS CASE?

A. In his prefiled testimony, Mr. Kollen assumes Dominion Resources will, even after the ORS' recommendation in this case, continue its acquisition of SCANA. Mr. Kollen assumes the combined companies will achieve merger savings of \$35 million in 2019 and \$70 million in 2020. Mr. Kollen's recommendation is sound and should be approved by this Commission.

Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS CASE.

A. The ORS position in this case still requires consumers to pay an additional \$86.2 million for 20 years to pay for the now-abandoned Summer nuclear plants. State law precludes the Commission from allowing the collection of these abandonment costs from ratepayers. If, however, the Commission disagrees with my conclusions in this regard, I recommend it, specifically, separate the nuclear recovery costs from the rate reductions set out in its final order in this case so as to be very transparent with the public that it will continue to pay for nuclear abandonment costs and that the cost will be approximately \$1,240 to the typical residential consumer.

In a further effort to be transparent, I recommend the Commission approve the ORS recommendations in regard to: 1. the elimination of the revised rate from SCE&G's rates; 2. the rate reductions associated with the TCJA; and 3. the merger expense reductions.

1 However, the rate reductions should be set out separately from any rate increases ordered
2 in the Commission's final order and in its public presentation of its findings in this case.
3

4 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

5 **A. Yes, it does.**
6
7